

J41TILKC - REDACTED

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 JENIECE ILKOWITZ and ADAM  
4 ILKOWITZ,

Plaintiffs,

5 v.

17 CV 773 (PGG) (OTW)

6 MICHAEL DURAND, et al.,

7 Defendants.

8 -----x

9 New York, N.Y.

10 April 1, 2019

6:00 p.m.

11 Before:

12 HON. ONA T. WANG,

13 Magistrate Judge

14 APPEARANCES

15 MESSNER REEVES

Attorneys for Plaintiffs

16 BY: ABIGAIL NITKA

LENA BRINJIKJI

17 McGIVNEY & KLUGER

18 Attorneys for Defendant Michael Durand

19 BY: RICHARD LEFF

20 LAW OFFICES OF GERALD NEAL SWARTZ

Attorneys for Defendant Houlihan Lawrence, Inc.

21 BY: JEFFREY BRIEM

22 ALSO PRESENT: ADAM ILKOWITZ

MICHAEL DURAND

MARLENE ZARFES

23 JANE CARMODY

24 JAMES DOHERTY, CHUBB

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(In open court)

THE COURT: So we're here because after several hours the parties in this case have reached a settlement, and we are about to put the terms on the record.

And as we discussed separately and before we got on the record, the parties understand that even if the parties cannot agree on a written document that states the terms of the settlement, the oral statement of the settlement that we say here will be binding on all of the parties and enforceable just as if it were in writing.

And I did want to confirm that even though Mrs. Ilkowitz, Jeniece Ilkowitz, is not here, Adam Ilkowitz represents that he has the authority to settle on behalf of both of them, both of the Ilkowitzes.

So at this point I will have the attorneys put on the record the main terms of the agreement, whoever wants to start first, and I will ask the other side -- I will ask all the attorneys whether there's anything else that is missing.

MR. LEFF: Thank you, your Honor, Richard Leff.

So the parties have agreed to resolve this matter in its entirety for the total amount of [REDACTED]. The plaintiffs, Mr. and Mrs. Ilkowitz, will agree to release all of the defendants in this matter. There is no admission of liability on behalf of the defendants, and the settlement is being made as a business decision by the parties.

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1           The parties agree to the confidentiality of the terms  
2 of the settlement and non-disclosure of the terms of the  
3 settlement agreement.

4           The parties will agree to a non-disparagement clause.

5           The defendants will provide plaintiffs' counsel with a  
6 written release and settlement agreement by this Friday,  
7 April 5th, by the close of business, and the defendants further  
8 agree that payment of the settlement will be provided to  
9 plaintiff's counsel within 30 days of receipt of the executed  
10 release and settlement agreement. It needs to be executed by  
11 Mr. and Ms. Ilkowitz. Those signatures need to be notarized.  
12 We will also need a copy of plaintiffs' counsel's W-9 and we  
13 will be able to process the paperwork for settlement. And the  
14 defendants agree not to file a stipulation of dismissal until  
15 after the plaintiffs have -- or excuse me, plaintiffs' counsel  
16 has cashed the settlement agreement into their escrow account.

17           I believe those are the fundamental primary terms of  
18 the settlement.

19           THE COURT: Ms. Nitka?

20           MS. NITKA: I believe it's mutual releases, not just  
21 one way.

22           MR. LEFF: That's correct.

23           THE COURT: And mutual non-disparagement, of course,  
24 as well.

25           MS. NITKA: That's correct.

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1           THE COURT: Anything else to add, Mr. Briem, on behalf  
2 your client?

3           MR. BRIEM: No, your Honor. As stated by Mr. Leff, we  
4 agree to those terms, although I think we're going to indicate  
5 that Mr. Leff and my clients are not going to be releasing each  
6 other, it's just going to be the defendants will release the  
7 plaintiffs, the plaintiffs will release the defendants.

8           THE COURT: Okay. So now I am going to poll the  
9 parties.

10          First, Mr. Ilkowitz, on your own behalf, do you  
11 understand the terms of the settlement?

12          MR. ILKOWITZ: Yes.

13          THE COURT: Have you had a chance to discuss it with  
14 your attorney today?

15          MR. ILKOWITZ: Yes.

16          THE COURT: Do you need any more time to discuss it  
17 with your attorney?

18          MR. ILKOWITZ: No.

19          THE COURT: Are you agreeing to the settlement?

20          MR. ILKOWITZ: Yes.

21          THE COURT: And I know that you represented this to me  
22 before, but you are also agreeing and accepting the terms of  
23 the settlement on behalf of your wife, Mrs. Jeniece Ilkowitz?

24          MR. ILKOWITZ: I conferred with her, and yes, I  
25 represent her.

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1 THE COURT: And you have full authority to enter into  
2 a settlement on her behalf today?

3 MR. ILKOWITZ: Yes.

4 THE COURT: That's it for you, Mr. Ilkowitz.

5 I will do the same thing, I will start with  
6 Mr. Durand, and then I will go to Ms. Zarfes, Ms. Carmody, and  
7 Mr. Doherty.

8 Mr. Durand, do you understand the terms of the  
9 settlement?

10 MR. DURAND: Yes.

11 THE COURT: Have you had a chance to discuss it with  
12 your attorney?

13 MR. DURAND: Yes.

14 THE COURT: Do you need any more time discuss it with  
15 your attorney?

16 MR. DURAND: No.

17 THE COURT: Are you agreeing to the settlement?

18 MR. DURAND: Yes.

19 THE COURT: Mr. Zarfes, the same questions. Do you  
20 understand the terms of the settlement?

21 MS. ZARFES: Yes.

22 THE COURT: Have you had a chance to discuss it with  
23 your attorney?

24 MS. ZARFES: Yes.

25 THE COURT: Do you need more time to discuss it with

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1 your attorney?

2 MS. ZARFES: No.

3 THE COURT: Are you agreeing to the settlement?

4 MS. ZARFES: I agree.

5 THE COURT: Ms. Carmody, do you understand the terms  
6 of the settlement as to you individually?

7 MS. CARMODY: Yes.

8 THE COURT: Have you had a chance to discuss it with  
9 your attorney?

10 MS. CARMODY: Yes.

11 THE COURT: Do you need more time to discuss it with  
12 your attorney?

13 MS. CARMODY: No, I do not.

14 THE COURT: Are you agreeing to the settlement?

15 MS. CARMODY: Yes.

16 THE COURT: And you have authority to agree on behalf  
17 of the corporate defendant, Houlihan Lawrence?

18 MS. CARMODY: Yes, I do.

19 THE COURT: So same answers to the questions, right?

20 MS. CARMODY: Yes.

21 THE COURT: You have authority to enter into the  
22 settlement?

23 MS. CARMODY: Yes.

24 THE COURT: And Mr. Doherty, on behalf --

25 MR. BRIEM: Your Honor, if I could be heard for one

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1 moment.

2 THE COURT: Yes.

3 MR. BRIEM: To be clear, Ms. Carmody's authority to  
4 speak behalf of Houlihan Lawrence in this particular case is  
5 based upon specific conduct for today's settlement conference.

6 THE COURT: Understood. And you agree to that,  
7 Ms. Carmody?

8 MS. CARMODY: Yes.

9 THE COURT: And Mr. Doherty, last but not least, do  
10 you understand the terms of the settlement?

11 MR. DOHERTY: Yes.

12 THE COURT: Have you had a chance to discuss it with  
13 your attorney?

14 MR. DOHERTY: With the defense counsel, yes, we have.

15 THE COURT: Do you need any more time to discuss with  
16 defense counsel?

17 MR. DOHERTY: No.

18 THE COURT: Are you agreeing to the settlement?

19 MR. DOHERTY: I'm not a party, but I am aware of the  
20 terms, and yes, we conferred with counsel.

21 THE COURT: As I said before, the oral statements here  
22 are binding and enforceable. Is there anything else anybody  
23 would like to put on the record before I go into my final  
24 remarks and send you off? Anything?

25 MS. NITKA: Thank you for your time, Judge.

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1 MR. LEFF: Thank you, your Honor.

2 MR. BRIEM: Yes, Judge, thank you.

3 THE COURT: I was not fishing for that. But as I told  
4 you all five hours ago, more than five hours ago and in  
5 separate session, I came to this settlement conference thinking  
6 this case had already zero chance of settling. The fact that  
7 we are here now putting settlement terms on a record really  
8 says something about all of you, not about me.

9 I wanted to thank you all for taking the time to sit  
10 with me, to teach me about your case, to talk to me openly and  
11 candidly about your views and about your positions and what you  
12 felt needed to happen today. I know that this was difficult.  
13 And this goes especially for the non-lawyers in the room. The  
14 rest of us deal with litigation and lawsuits all the time every  
15 day, but this was personal to you, and I wanted to acknowledge  
16 that it's especially personal, I think, to the Ilkowitzes  
17 because this is their home, they have been living there. And I  
18 think when it comes to issues relating to your home and your  
19 family that there are deeply personal and emotional issues that  
20 need to be addressed.

21 And I wanted to thank you, Mr. Ilkowitz, especially  
22 for coming and speaking with me candidly and really letting me  
23 know how you felt about everything. I did listen, even if I  
24 was beating you up, just like I was beating up everyone else,  
25 but I understand that it's more personal to you because it's



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1 your home. So I wanted to thank you all for being here all  
2 afternoon and taking all this time and for your candor.

3 This case could not have settled today unless you all  
4 were here to listen, to let go of some of your positions that  
5 you held coming in here today. And I hope that even though you  
6 may not feel happy or comfortable with what happened today,  
7 with the process today, that you get some closure, that the  
8 process moved you to a better place, and that you can all move  
9 on with your lives and with things that are much more important  
10 to you than sitting in a courtroom on a lovely sunny afternoon.  
11 This especially goes for the non-lawyers. This is what we do.

12 Anything else?

13 MS. NITKA: No, Judge, thank you very much.

14 MR. LEFF: Thank you, your Honor.

15 THE COURT: Thank you very much. We are adjourned.

16 (Adjourned)